

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PEDRO J. AMARO,

Plaintiff,

vs.

No. CV 16-00993 KG/JHR

STATE OF NEW MEXICO, et al.,

Defendants.

**ORDER OVERRULING OBJECTIONS AND GRANTING
EXTENSION OF TIME TO FILE AMENDED COMPLAINT**

THIS MATTER is before the Court on the Objections to Order Granting Leave to Amend (Doc. 65) and Motion for Extension of Time (Doc. 66) filed by Plaintiff Pedro J. Amaro. The Court overrules Plaintiff Amaro's Objections and grants his Motion for Extension of Time.

In his Objections to Order Granting Leave to Amend, Amaro contends that the Court's Order granting him leave to file an amended complaint is "overly strict," requires him to attach materials that he is unable to attach, and does not permit him to seek all of the relief allowed by the Tenth Circuit's Order. (Doc. 65) The Court overrules Plaintiff Amaro's objections. The Court's Order does not restrict Amaro but, instead, requires him to file an amended complaint that complies with Fed. R. Civ. 8 and 10. Rule 8 requires that a complaint set out a short, plain statement of the claim showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a). Each allegation must be simple, concise, and direct. Fed.R.Civ.P. 8(d)(1).

The amended complaint must stand alone and contain all of the plaintiff's claims. *Mink v. Suthers*, 482 F.3d 1244, 1254 (10th Cir.2007). The Court's reference to supporting materials does not require Plaintiff to attach every paper relating to his case but, instead, requires him to attach only supporting papers that actually form the basis of his claims. Under Rule 10(c) of the

Federal Rules of Civil Procedure, written instruments attached to a complaint are incorporated and made a part of the complaint. The types of exhibits contemplated by Rule 10(c) are written instruments, such as contracts, that provide the operative basis of the claim. *See Rose v. Bartle*, 871 F.2d 331, 339 n. 3 (3d Cir.1989); *Perkins v. Silverstein*, 939 F.2d 463, 467 n. 2 (7th Cir.1991). Therefore, under D.N.M. LR-Civ. 10.4, exhibits and other documentary evidence are not to be attached to pleadings unless the documents form the basis of the action.

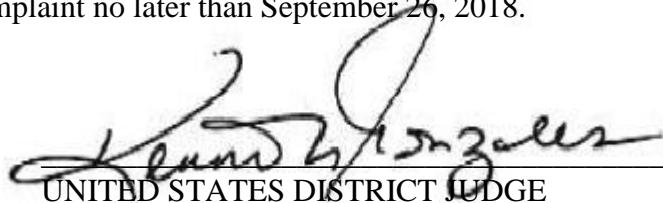
Last, Amaro is not precluded from asserting any claim for relief allowed by the Tenth Circuit's Order. Amaro may raise any claim authorized by the Tenth Circuit's decision. Conversely, Amaro may not re-allege any claim that was previously dismissed by this Court and the dismissal was affirmed by the Tenth Circuit. The Court overrules the Objections to the Order Granting Leave to Amend.

In his Motion for Extension of Time, Amaro claims that 30 days is an inadequate amount of time for him to draft the amended complaint and he requests an additional 30 days, to September 26, 2018, to file the amended complaint. The Court grants Amaro an extension of time to September 26, 2018 to file his amended complaint. If the amended complaint is not filed on or before September 26, 2018, the Court may dismiss this proceeding without further notice.

IT IS ORDERED:

(1) Plaintiff Pedro J. Amaro's Objections to Order Granting Leave to Amend (Doc. 65) are OVERRULED;

(2) Plaintiff Amaro's Motion for Extension of Time (Doc. 66) is GRANTED and Plaintiff Amaro may file his amended complaint no later than September 26, 2018.



LEWIS H. GONZALES
UNITED STATES DISTRICT JUDGE